

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| STATE OF OHIO, | : | APPEAL NO. C-080684 |
| | : | TRIAL NOS. B-9903656-A |
| Plaintiff-Appellee, | : | B-9903995 |
| vs. | : | <i>DECISION.</i> |
| EARL BUCKNER, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Sentences Vacated and Cause Remanded

Date of Judgment Entry on Appeal: July 24, 2009

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *James Michael Keeling*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Earl Buckner, pro se.

Please note: This case has been removed from the accelerated calendar.

Per Curiam.

{¶1} Defendant-appellant Earl Buckner presents on appeal a single assignment of error, challenging the Hamilton County Common Pleas Court's judgment overruling his motion to "[c]orrect" his sentences. We hold that the court erred in overruling the motion because Buckner had not been advised during sentencing about postrelease control.

{¶2} In 1999, Buckner was convicted upon jury verdicts finding him guilty on two counts of drug trafficking and four counts of having weapons under a disability. He unsuccessfully appealed his convictions to this court, and the Ohio Supreme Court dismissed his appeal there.¹

{¶3} In 2002, we reopened his appeal and vacated the sentences imposed for the four weapons offenses on the ground that the offenses were allied and of similar import.² On remand, the trial court, without Buckner present, resentenced him for a single weapons offense.

{¶4} In December 2007, Buckner filed a "Motion to Correct A Void Sentence Based Upon the Court[']s Disregard of * * * Statutory Sentencing Requirements." The common pleas court overruled the motion, and this appeal followed.

{¶5} In his motion, Buckner argued that, under the Ohio Supreme Court's decisions in *State v. Jordan*³ and *State v. Bezak*,⁴ his sentences were void because the trial court had failed to adequately advise him concerning postrelease control. The state here concedes as much, and we agree.

¹ See *State v. Buckner* (Oct. 25, 2000), 1st Dist. Nos. C-990670 and C-990671, discretionary appeal not allowed (2001), 91 Ohio St.3d 1459, 743 N.E.2d 400.

² See *State v. Buckner* (Mar. 31, 2002), 1st Dist. Nos. C-990670 and C-990671.

³ 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864.

⁴ 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961.

{¶6} R.C. 2929.19(B)(3)(c) required the trial court, at sentencing, to advise Buckner concerning postrelease control. At his 1999 sentencing hearing, the court neglected to mention postrelease control. And in 2002, when the court resentenced him on the weapons offense, Buckner was not present. Thus, Buckner’s sentences were void,⁵ and he was entitled to a new sentencing hearing.⁶

{¶7} Moreover, the trial court had jurisdiction to correct its void judgment.⁷ Accordingly, we hold that the court erred when it overruled Buckner’s motion to “[c]orrect [his] void [s]entence[s].”

{¶8} We, therefore, sustain the assignment of error, vacate the sentences, and remand this case for resentencing in accordance with the law and this decision.

Sentences vacated and cause remanded.

HILDEBRANDT, P.J., PAINTER and SUNDERMANN, JJ.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

⁵ See *Jordan*, syllabus.

⁶ See *Bezak*, syllabus.

⁷ See *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶18-19.